

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
Implementation of Section 621(a)(1) of)
the Cable Communications Policy Act of 1984) MB Docket No. 05-
311
as amended by the Cable Television Consumer)
Protection and Competition Act of 1992)

**COMMENTS OF THE OFFICE OF THE CITY ATTORNEY
OF THE CITY OF SAN JOSE CALIFORNIA**

These comments are filed by the Office of the City Attorney of the City of San Jose in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, San Jose believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis and has done so in the past. Further the staff of the City of San Jose stands ready and willing to reasonably and expeditiously negotiate and present to the City Council of the City of San Jose the required local franchise, if requested by a new entrants, for the use of the City's streets in the provision of video services. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

Cable Franchising in Our Community

Community Information

The City of San Jose is a charter city of the State of California with a population of almost one million. The City's current provider is Comcast of California.

Our current cable franchise requires the cable operator to pay a franchise fee to the City in the amount of 5% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act. We require the cable operator to provide

capacity for public, educational, and/or governmental ("PEG") access channels on the cable system and associated support and capital grants for PEG purposes. Our franchise contains requirements regarding emergency alerts. These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency. Our franchise contains customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise. Our franchise requires that the cable operator to provide service to all areas of our community. In order to ensure that our residents have access to current telecommunications technologies, our franchise contains rebuild and upgrade requirements. Comcast has recently undertaken a major rebuild of their system in our city. Our franchise contains insurance and bonding requirements. The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is required to obtain a permit from the appropriate municipal office as well before it may access the public rights of way.

Competitive Cable Systems

In 1996 our community was approached by the company then known as Pacific Bell. Pacific Bell requested and was granted a competitive cable video franchise by the City, sometimes referred to as a cable over builder. The franchise was granted in the matter of a few months and Pacific Bell began their build out under the agreed upon build out schedule. The franchise granted to Pacific Bell was very similar to the then existing franchise with the current cable provider. Due to a change in their corporate business plan, Pacific Bell abandoned their franchise prior to completion of their build out and is not providing service in our community today.

The City has recently been approached by SBC/AT&T with the request that they be granted permits to install equipment in the right of way to provide video programming to our residents. The City has expressed its enthusiasm at the prospect of facilitating these advanced video services for the benefit of our residents. We have had several informative and productive discussions with SBC/AT&T regarding their desire to provide video programming in the City. As stated in the introduction, we stand ready and willing to reasonably and expeditiously negotiate and grant the required local franchise for the use of the City's streets in the provision of video services. Our negotiations have centered around the principal that City staff is willing to recommend the City grant a competitive franchise on a basis comparable to the existing franchise. While talks are progressing SBC/AT&T does not appear willing at this time to accept either the concept that a franchise is required or the terms and conditions under which the current provider is operating.

Conclusions

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours; to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

We therefore respectfully request that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

RICHARD DOYLE
City Attorney

By: _____
William H. Hughes
Assistant City Attorney

cc: NATOA, info@natoa.org
John Norton, John.Norton@fcc.gov
Andrew Long, Andrew.Long@fcc.gov

